

## LINCOLN CITY/LANCASTER COUNTY PLANNING STAFF REPORT

for May 25, 2005 PLANNING COMMISSION MEETING

**P.A.S.:** Change of Zone #2382B  
Stony Ridge Planned Unit Development (PUD)

**PROPOSAL:** A request to amend the PUD to allow an expansion of the area for the sale of alcoholic beverages for consumption on the premises.

**CONCLUSION:** This use is located within a Planned Unit Development (PUD) which includes both a commercial building and apartments. The proposed expansion meets all the separation requirements for a special permit for on-sale if they were applied, with the one exception that the existing licensed premises is less than 100' from a residential district. Applying a standard incorporated into a plan recently approved under the new PUD ordinance which requires the licensed premises to be more than 100' away from the nearest residential building, this request is more than 170' away from the nearest apartment building to the east, and more than 140' from the nearest townhouse to the north. It is also buffered by intervening landscaping and a garage to the east, and landscaping and a fence to the north. The impact of the proposed expansion is minimal and should not negatively affect neighboring properties.

<b>RECOMMENDATION:</b>	Conditional Approval
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### **GENERAL INFORMATION:**

**LEGAL DESCRIPTION:** See attached ownership certificate.

**LOCATION:** 3048 North 70<sup>th</sup> Street

**EXISTING ZONING:** B-1 Local Business/P.U.D.

**EXISTING LAND USE:** Bar and Grill

### **SURROUNDING LAND USE AND ZONING:**

North:	Residential	R-4
South:	Commercial	B-1
East:	Residential	R-5
West:	Commercial, Residential	R-4, O-2

**HISTORY:** April 11, 1988 - CZ#2382 was approved for Stony Ridge PUD for a 4,800 square foot restaurant and 144 apartment units.

**COMPREHENSIVE PLAN SPECIFICATIONS:** The Comprehensive Plan designates commercial land uses in this area.

**BACKGROUND:** This request seeks to expand the licensed premises for on-site consumption of alcohol to include an outdoor seating area at the northwest corner of the building. A portion of the outdoor area is under an existing roof extension (approximately 425 square feet), and a portion of it extends west beyond that (approximately 375 square feet). The existing State liquor license only covers the inside of the building, and must also be amended to include the outdoor seating area.

The subject premises is located within the Stony Ridge PUD. Lincoln Municipal Code (LMC) Chapter 27.60 (PUD District) which was amended earlier this year requires that modifications to older PUD's be in accordance with the new ordinance. It allows minor amendments to be approved administratively by the Planning Director provided it meets certain conditions, including not exceeding 15% of the total floor area. However, this request is for a 19% increase and is not eligible.

In 1988 when Stony Ridge was approved, there was no requirement for a special permit for the sale of alcohol, and it was not addressed as part of the PUD. In those PUD's which included a restaurant like this one, the sale of alcohol for consumption on the premises was permitted and allowed without any further review. Because this amendment is to allow the expansion of a use now regulated by a special permit, and because it exceeds the 15% floor area cap for an administrative amendment, staff has determined a public hearing is necessary and requires City Council approval.

In 2004, the Van Dorn Acres PUD at South 84<sup>th</sup> and Van Dorn Streets was approved and included specific provisions to address the sale of alcohol within the development. A condition was added requiring that all alcohol sales must be more than 100' from any residential building. The distinction is that the separation distance referenced a residence versus a residential district (as with a special permit for the sale of alcohol) acknowledging the fact that the entire PUD was zoned R-3.

**ANALYSIS:**

1. The proposed expansion to allow an outdoor seating area extends the use to the west towards North 70<sup>th</sup> Street, and does not bring the use any closer to either the townhomes to the north or the apartments to the east. Adequate off-street parking is provided on site in compliance with the parking ordinance and can accommodate the proposed expansion. Primary access to the site is provided by two driveways onto North 70<sup>th</sup> Street. There are also

internal connections to the adjacent parking lots for both the apartment site to the east and the bank to the south and they provide access to Adams Street. The additional demand upon the transportation system in this area will not be significant and can easily be accommodated by the improvements now in place. No additional utility improvements are required to accommodate this request.

2. This PUD was originally approved to include both the restaurant and the apartments. The site was planned to enhance compatibility between the uses. It provides good access to the restaurant while providing internal connections among parking lots, but in a manner that does not require the commercial traffic to intrude into the residential. A privacy fence, landscape screening, and the garages for the apartments serve to buffer the restaurant from the residential.

3. There are no specific criteria in the Zoning Ordinance for evaluating this amendment to the PUD. However, specific conditions are contained in the special permit for the sale of alcohol for consumption on the premises per LMC Section 27.63.680. Because the issue is whether the expansion of the area where alcohol can be consumed is compatible with the neighborhood, it is appropriate that the conditions of LMC Section 27.63.680 serve as the basis for review. Those conditions and findings are reviewed in the following section.

**4. SPECIAL PERMIT REQUIREMENTS PER LINCOLN MUNICIPAL CODE (LMC) 27.63.680:** Alcoholic beverages may be sold for consumption on the premises in the B-1, B-3, H-1, H-2, H-3, H-4, I-1, I-2 and I-3 zoning districts upon the approval of a special permit. Alcoholic beverages may also be sold for consumption on the premises as an accessory use to a golf course or country club as part of a separate special permit under Section 27.63.130 approving the golf course or country club in any district where recreational facilities are allowed as a permitted use, permitted conditional use, or permitted special use. A special permit for such use may be granted subject to the requirements of the respective districts, all applicable ordinances, and the following conditions:

**(a) Parking shall be provided on-site at the ratio of one space per 100 square feet of gross floor area.**

Including the proposed 800 square foot expansion, 54 spaces are required for the 5,315 square feet of usable floor area. 68 spaces are provided on site, 14 in excess of the number required.

**(b) The sale of alcoholic beverages for consumption off the premises shall not be permitted without issuance of a permit under LMC Section 27.63.685 of this code.**

This section is not applicable to this review as LMC Section 27.60.010 of the PUD ordinance states that a separate special permit for the sale of alcohol is not required. If approved, this amendment allows only an expansion of an area for the sale of alcohol for consumption on the premises.

**(c) The designated area specified in a license issued under the Nebraska Liquor Control Act of any building approved for such activity must be located no closer than 100 feet from a day care facility, park, church, state mental health institution, or a residential district (except where such use is accessory to a golf course or country club).**

The area of the proposed expansion is 83' from the R-5 district boundary to the east. The existing building was shown as a restaurant on the approved plan for the Stony Ridge PUD approved in 1988. Van Dorn Acres, a recently approved PUD included a provision that requires all buildings involved in the sale of alcohol to be at least 100' away from any residential building. The distinction is that the separation distance is measured to a residential building and not a residential district. This standard was written this way because the entire PUD was zoned R-3. If that standard is applied in this case, the building is more than 150' away from both the nearest townhome or apartment building. The area of the proposed outdoor seating is also maintains more than a 150' separation from the townhouses to the north, and is approximately 175' from the nearest apartment building to the east.

The proposed expansion for the outdoor seating is at the northwest corner of the building. This corner of the building is recessed, and the entrance door is underneath an overhanging roof extension and opens onto North 70<sup>th</sup> Street. The PUD site plan was designed to provide landscape screening along the north and east property lines, and also located the garage which extends almost the entire length of the common property line between the restaurant and apartments.

**(d) Any lighting on the property shall be designed and erected in accordance with all applicable lighting regulations and requirements.**

No additional lighting is proposed in conjunction with the proposed expansion.

**(e) Vehicle stacking for a drive-through window used as any part of the permitted business operation shall not be located in any required building setback from a residential district.**

A drive-through window is not shown as part of this application.

**(f) The use shall not have any amplified outside sound or noise source, including bells, buzzers, pagers, microphones, or speakers within 150 feet of any residential district. This shall not apply to sound sources audible only to the individual to whom they are directed, such as personal pagers, beepers, or telephones.**

No such devices are shown as part of this application.

**(g) No access door to the business, including loading or unloading doors, shall face any residential district if such doors are within 150 feet of the residential district. This shall not apply to emergency exit doors required by building or safety codes. No door facing a residential district shall be kept open during the operation of the establishment.**

The existing front access door opens onto North 70<sup>th</sup> Street. No new doors are proposed as part of this expansion.

**(h) Vehicular ingress and egress to and from the property shall be designed to avoid, to the fullest extent possible as determined by the City Council, disruption of any residential district. Particular attention shall be given to avoiding designs that encourage use of residential streets for access to the site instead of major streets.**

Primary access to the premises is from two driveways onto North 70<sup>th</sup> Street neither of which are considered a "residential street" at this location. An internal connection to the apartment complex parking lot and another to the bank's parking lot to the south provide access to Adams Street. All drives and connections are existing.

**(i) All other regulatory requirements for liquor sales shall apply, including licensing by the state.**

**(j) The City Council may consider any of the following as cause to revoke the special permit approved under these regulations:**

- (1) Revocation or cancellation of the liquor license for the specially permitted premises; or**
- (2) Repeated violations related to the operation of the permittee's business.**
- (3) Repeated or continuing failure to take reasonable steps to prevent unreasonable disturbances and anti-social behavior on the premises**

**related to the operation of the permittee's business including, but not limited to, violence on site, drunkenness, vandalism, solicitation, or litter.**

**Planning Commission approval is required for this use.**

## **5. DEPARTMENT RESPONSES:**

**POLICE:** The Police Department had no objection to this request.

**PUBLIC WORKS:** Public Works and Utilities had no objection to this request.

**HEALTH:** As an advisory note, the Health Department recommends that if smoking is allowed in the outdoor patio area, that at least 20% of the area of the total square footage of the walls and ceiling be open to ensure adequate ventilation.

## **CONDITIONS:**

Site Specific:

1. This approval permits the expansion of the area designated for the sale of alcohol for consumption on the premises as shown on the site plan.

General:

2. Before receiving building permits:
  - 2.1 The construction plans comply with the approved plans.

Standard:

3. The following conditions are applicable to all requests:
  - 3.1 Before the sale of alcohol for consumption on the premises, all development and construction is to comply with the approved plans.
  - 3.2 The site plan accompanying this permit shall be the basis for all interpretations of setbacks, yards, locations of buildings, location of parking and circulation elements, and similar matters.

- 3.3 This resolution's terms, conditions, and requirements bind and obligate the permittee, its successors and assigns.
- 3.4 The applicant shall sign and return the letter of acceptance to the City Clerk within 30 days following the approval of the special permit, provided, however, said 30-day period may be extended up to six months by administrative amendment. The clerk shall file a copy of the resolution approving the special permit and the letter of acceptance with the Register of Deeds, filling fees therefor to be paid in advance by the applicant.

Prepared by:

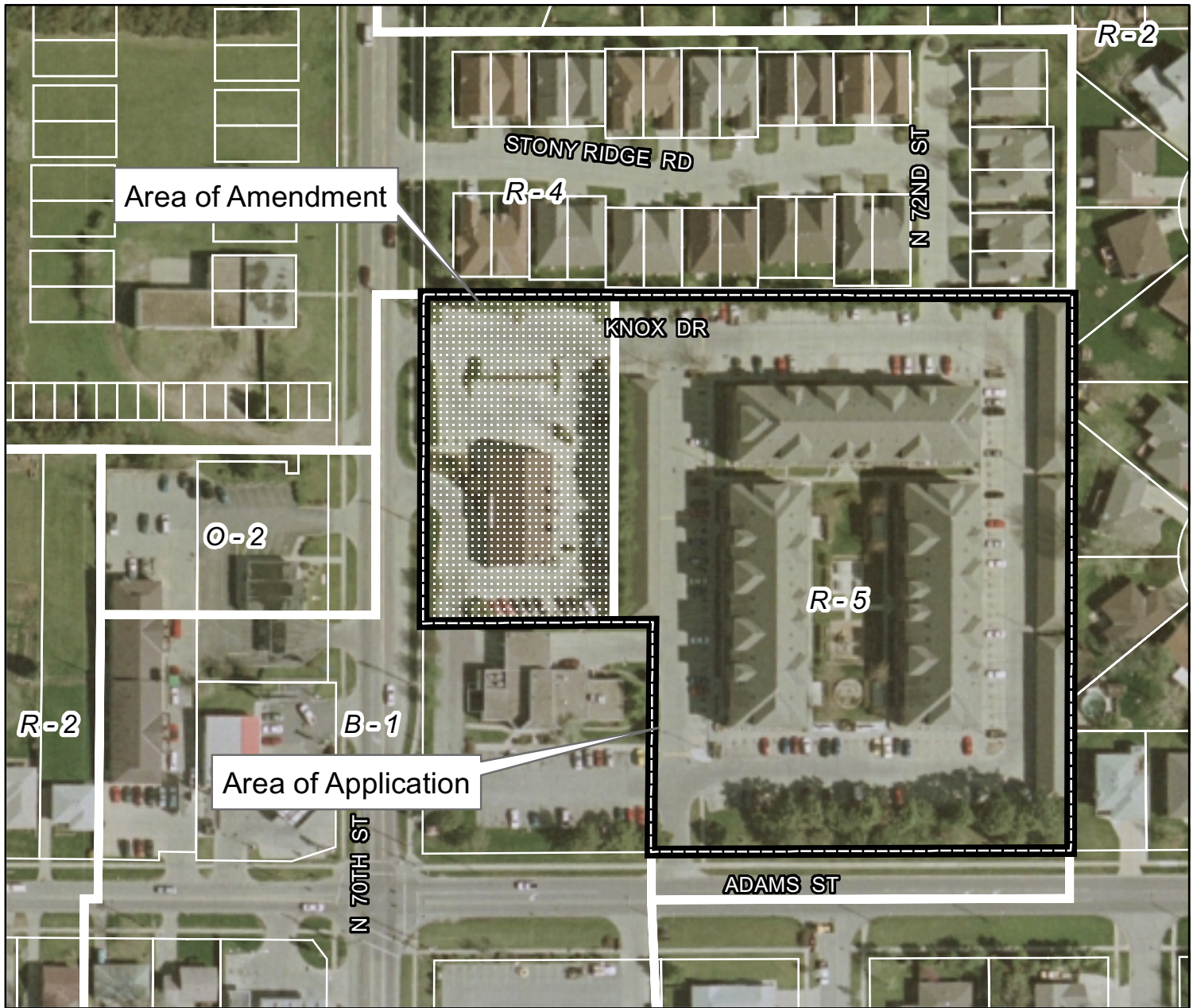
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Brian Will, AICP, 441-6362, [bwill@lincoln.ne.gov](mailto:bwill@lincoln.ne.gov)  
Planner  
May 11, 2005

**OWNER:** BJ McLand, Inc.  
2600 Jane Lane  
Lincoln, NE 68512  
(402) 466-6679

**APPLICANT:** David Moreland  
1639 Sunset Road  
Lincoln, NE  
(402) 489-9455

**CONTACT:** Kevin Hittle  
123 South 84<sup>th</sup> Street  
Lincoln, NE  
(402) 483-2893



2002 aerial

## Change of Zone #2382B

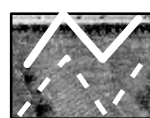
**PUD**

**N. 70th & Adams St.**

### Zoning:

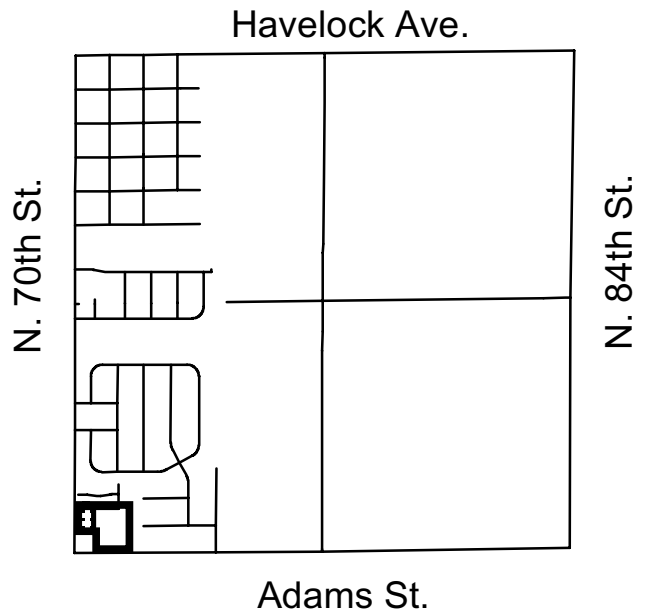
R-1 to R-8	Residential District
AG	Agricultural District
AGR	Agricultural Residential District
R-C	Residential Conservation District
O-1	Office District
O-2	Suburban Office District
O-3	Office Park District
R-T	Residential Transition District
B-1	Local Business District
B-2	Planned Neighborhood Business District
B-3	Commercial District
B-4	Lincoln Center Business District
B-5	Planned Regional Business District
H-1	Interstate Commercial District
H-2	Highway Business District
H-3	Highway Commercial District
H-4	General Commercial District
I-1	Industrial District
I-2	Industrial Park District
I-3	Employment Center District
P	Public Use District

One Square Mile  
Sec. 10 T10N R7E



Zoning Jurisdiction Lines

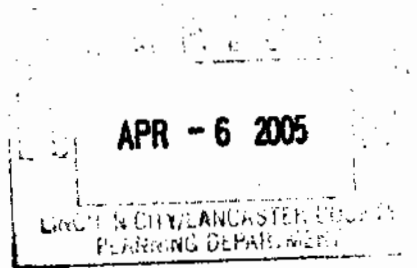
City Limit Jurisdiction





AREA OF EXPANSION

The owners of B.J. McLand, Inc. (building and land) and McMore, Inc., D.B.A. Sportscaster's Bar and Grill are applying for a special zoning permit to build an outdoor dining area/ beer garden to be located at 3048 North 70th Street, Lincoln, Nebraska.



**LINCOLN-LANCASTER COUNTY HEALTH DEPARTMENT  
INTER-OFFICE COMMUNICATION**

<b>TO:</b> Brian Will	<b>DATE:</b> April 15, 2005
<b>DEPARTMENT:</b> Planning	<b>FROM:</b> Chris Schroeder
<b>ATTENTION:</b>	<b>DEPARTMENT:</b> Health
<b>CARBONS TO:</b> EH File EH Administration	<b>SUBJECT:</b> Sportscaster Bar & Grill SP #05019

The Lincoln-Lancaster County Health Department (LLCHD) has reviewed the special permit application to build an outdoor dining area/ beer garden with the following noted:

- If smoking will be allowed in the area, the LLCHD recommends at least 20% open space relative to the total square footage of the walls and ceiling to ensure adequate ventilation for protecting public health.
- During the construction process, the land owner(s) will be responsible for controlling off-site dust emissions in accordance with Lincoln-Lancaster County Air Pollution Regulations and Standards Article 2 Section 32. Dust control measures shall include, but not limited to application of water to roads, driveways, parking lots on site, site frontage and any adjacent business or residential frontage. Planting and maintenance of ground cover will also be incorporated as necessary.

# CERTIFICATE OF OWNERSHIP

TO WHOM IT MAY CONCERN:

FILE NO: 12911

The undersigned, hereby certifies the following real property title data to be true and correct as taken from the records of LANCASTER County, Nebraska regarding title to the following described real estate:

**Lot 1, Block 1, Stony Ridge First Addition, Lincoln, Lancaster County, Nebraska**

MOST RECENT CONVEYANCE:

Grantee: D.G. Hyland, Inc., a Nebraska Corporation, now known as B.J. McLand, Inc., a Nebraska Corporation

Inst. No.: 92-25820

Date of Instrument: June 4, 1992

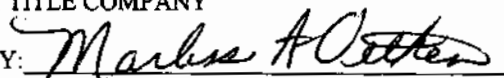
Date Filed: June 9, 1992

This certificate is a contract between the abstractor and the person requesting the certificate. This certificate does provide a report of the information available in the public record of the County in which the subject real estate is located on the date shown below. This certificate does not pass on the marketability of title, nor as to the legality or sufficiency of any instrument or proceeding in the chain of title to said real estate. This certificate is not an opinion of title or a guaranty of title. The liability of the producer of this document is limited to fee charged for it.

EFFECTIVE DATE: APRIL 5, 2005 AT 8:00 A.M.

UNION TITLE COMPANY

BY:



REGISTERED ABSTRACTER

CERTIFICATE OF AUTHORITY NO. 581